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FEDERAL ELECTIC
COMMISSION
OFFICE OF GENERAL
COUNSEL

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The Honorable Scott E. Thomas
Chairman
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Dear Chairman Thomas,

Attached please find a complaint submitted on behalf of Brian Kennedy for Congress alleging violations of the Federal Election Campaign Act by Mike Whalen and Whalen for Congress among others.

Thank you very much for your attention in this matter.

Sincerely,

Carol Earnhardt
Brian Kennedy for Congress

MUR # 5691

November 30, 2005

The Honorable Scott E. Thomas
Chairman
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re. Violations of FECA by Mike Whalen, Whalen for Congress, Machine Shed Restaurants, Inc., Heart of America Restaurants & Inns, Inc. (and others as set forth in Attachment A)

Dear Chairman Thomas:

It has come to our attention that Whalen for Congress, Mike Whalen, Machine Shed Restaurants, Inc., Heart of America Restaurants & Inns, Inc. and others (identified in Attachment A) have conspired to engage in violations of the Federal Election Campaign Act. An analysis of the facts demonstrates a purposeful and coordinated effort by Mike Whalen and his associated businesses to use corporate funds to influence a federal election.¹

Specifically, the corporations have funded a television advertising campaign in Iowa's First Congressional District promoting congressional candidate Mike Whalen. The facts outlined herein show, among other things, collaboration among the parties to disseminate advertising produced by the candidate's campaign vendor, featuring the federal candidate, paid for with corporate funds and utilizing corporate staff and campaign volunteers. Such activity is a calculated effort to evade the strict prohibition on corporate contributions to federal campaigns and has resulted in illegal corporate contributions and illegal coordinated communications.²

¹ As the Federal Election Commission is well aware, the prohibition against corporate contributions to influence federal election is now nearly one hundred years old, making it one of the oldest federal campaign finance laws in the United States. See *McConnell v Federal Election Commission*, 540 U S 93 (2003)

² See MUR 3918 (conciliation agreement finding that advertisements by Joel Hyatt Legal Services were improper corporate expenditures benefiting the Hyatt for Senate Campaign), See also Statements of Reasons by Commissioners Thomas and McDonald at <http://www.fec.gov/members/thomas/thomasstatement15.htm> and the Statements of Reasons by Commissioners Wold, Elliott, Mason and Sandstrom at

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Factual Background

1. Mike Whalen filed his Statement of Candidacy on February 4, 2005. Mike Whalen’s congressional campaign committee, Whalen for Congress, filed its Statement of Organization on February 16, 2005.
2. Mike Whalen is President and CEO of Heart of America Restaurants, Inc, and its subsidiary the Iowa Machine Shed Restaurant, Inc. Since the formation of Mike Whalen’s congressional campaign, his campaign consultants have been hired by his corporation to create at least one TV advertisement ostensibly for the corporation, but that is, in fact, a campaign ad.
3. Since the beginning of Whalen for Congress, the campaign’s strategy has been not to highlight Mike Whalen’s policy proposals, but to prominently feature Mike Whalen’s 27 year association with Machine Shed Restaurants, Inc. as one of the candidate’s principal qualification to serve in the United States Congress. The themes in the corporate advertising prominently featuring Whalen and the themes put forward by the campaign have been nearly identical. Specific examples of this nexus include:
 - a. On June 5, 2005, Mike Whalen held his official campaign announcement event at the Iowa Machine Shed Restaurant in Davenport, Iowa. In his announcement statement Mike Whalen is quoted as saying: *"America owes a lot to rural Iowa," he said, "and I want to be an advocate for Iowa's farms and small towns like our restaurant has tried to be for 27 years."*³
 - b. The campaign website www.MikeWhalen.com features images of the restaurant, and Mike Whalen standing in restaurant, identical to those found at the restaurant’s website www.MachineShed.com .⁴
 - c. On the campaign website www.MikeWhalen.com the “Hear Mike’s Story” section features a video clip of Mike Whalen speaking of returning to Iowa “27 years ago to open a little restaurant called the Iowa Machine Shed with the motto ‘dedicated to the Iowa Farmer’”.⁵

<http://www.fec.gov/members/mason/masonstatement4.htm> regarding *FEC v Forbes*, CV 98-6148 (S D N Y) and discussing the Commission’s analysis and reasoning in MUR 3918

³ See <http://www.mikewhalen.com/news/nspress.html> (visited November 28, 2005). Attachment B.

⁴ Compare <http://www.machineshed.com> with <http://www.mikewhalen.com> (visited November 23, 2005)

⁵ See CD Attachment

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- d. In July of 2005, the Whalen for Congress campaign began to widely distribute a booklet biography of Mike Whalen entitled *Yes to Pork Chops, No to Pork Barrel*.⁶ The campaign booklet features Mike Whalen's role in the founding of the Iowa Machine Shed Restaurant and contains images and identical to those found at www.MachineShed.com.⁷ The text of the campaign booklet again states, "Mike opened a restaurant dedicated to the Iowa farm economy." In detailing Mike Whalen's business career, it further states, "It's still that entrepreneurial spirit that still drives Mike Whalen 27 years later." The "27 years" theme appears repeatedly in the campaign booklet.⁸
- 4. From the first week of April 2005 through at least August 11, 2005, Machine Shed Restaurants, Inc. and its parent company Heart of America Restaurants, Inc. aired a television advertisement (hereinafter "the corporate funded TV ad") throughout Iowa's First Congressional District that featured congressional candidate Mike Whalen. The corporate funded TV ad has been aired on broadcast television stations as well as local cable television outlets in communities in Iowa's First congressional district including locales where there are no Machine Shed Restaurants.⁹
- 5. The corporate funded TV ad features congressional candidate Mike Whalen, as well as images, language and themes substantially similar to those utilized contemporaneously in materials promoting Mike Whalen's congressional campaign. In the corporate funded TV ad, congressional candidate Mike Whalen serves as narrator. Furthermore, he narrates the ad while standing in the restaurant and citing frequently used campaign themes—27 years in business and dedicated to the Iowa Farmer. The script of the corporate TV ad states:

The Machine Shed was founded on a simple premise. Make sure the Iowa farmer is proud of the meals we serve. Hi, I'm Mike Whalen. The Iowa Machine Shed is turning 27 years old this year. But our award-winning juicy pork chops, our USDA choice steaks, and our homemade from-scratch pies and soups are getting better than ever. Drop by the Iowa Machine Shed just off of Interstate 80 in Davenport and Des Moines. We'll look forward to sharing the best that Iowa agriculture has to offer.

⁶ See Attachment C

⁷ Compare [http //www.machinshed.com](http://www.machinshed.com) with [http //www.mikewhalen.com](http://www.mikewhalen.com) (visited November 23, 2005)

⁸ See Attachment C

⁹ See Ed Tibbets, "TV ads become issue in campaign," Quad-City Times, November 12, 2005. Attachment D

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6. Appearing as diners in the corporate funded TV ad are: (a) an employee of a political consultant for Whalen for Congress and (b) at least two Whalen for Congress campaign volunteers.¹⁰
 7. The corporate funded TV ad includes an image of a child playing with a small green toy John Deere tractor, a symbol frequently invoked by Congressional candidate Mike Whalen and the Whalen for Congress campaign.¹¹
 8. On or about November 10, 2005, when first questioned by members of the media about the corporate funded TV ad, Brian Dumas, a spokesperson for the Whalen for Congress campaign and Vice President of the political consulting firm Victory Enterprises,¹² told reporters that the corporate TV ad was not created by consultants to the Whalen campaign.¹³ Dumas maintained that the corporate TV ad was produced by a media firm that has previously produced commercials for the Machine Shed Restaurant and that the commercial was filmed "well before [Whalen] was ever considered a candidate or had thought about running."¹⁴ Similarly, in response to these same inquiries Mike Whalen denied any involvement of his campaign in producing the corporate funded TV ad.¹⁵
 9. However, one week subsequent to Mike Whalen's and Dumas' denial of campaign involvement in production of the corporate funded TV ad, the media reported that contrary to Dumas' and Mike Whalen's assertions, the corporate funded TV ad was in fact produced by Whalen for Congress' lead political consultant, Steve Grubbs of Victory Enterprises.¹⁶
 10. It was further reported that the corporate funded TV ad was filmed and produced in March of 2005,¹⁷ which is the month after Whalen for Congress filed its Statement of Organization and two months after Steve Grubbs and Victory Enterprises were retained by the Whalen for Congress campaign.

¹⁰ Upon information and belief, acting as diners in the restaurant scene of the corporate funded TV ad are Betty Fogel, a Victory Enterprises employee and long time political activist, along with Harlan Meier and Verna Kittleson, both of whom are listed as public campaign supporters on www.MikeWhalen.com (visited April 21, 2005)

¹¹ See Cyrus Moussavi, "Whalen Campaign Kickoff with Time to Spare", Waterloo Courier, June 6, 2005 at <http://www.mikewhalen.com/news/courier.html> (visited November 28, 2005) ("Are we still going to be making little green tractors in Eastern Iowa in 20 years?" Whalen asked, "That's an important question ") Attachment E

¹² See <http://www.briandumas.com/about.html> (visited November 23, 2005)

¹³ See Associated Press, "Rivals complain about Whalen television spot," November 11, 2005 Attachment F

¹⁴ *Id.*

¹⁵ See Ed Tibbetts, "TV ads become issue in campaign," Quad-City Times, November 12, 2005 Attachment D

¹⁶ See Ed Tibbetts, "TV ad prompts more concern," Quad-City Times, November 18, 2005. Attachment G.

¹⁷ *Id.*

11. News accounts further revealed that Carmen Darland,¹⁸ vice-president for marketing at Heart of America, Inc. (the parent company of the Machine Shed Restaurants), collaborated with agents of Victory Enterprises in scripting the corporate funded TV ad.¹⁹
12. During the week of November 21, 2005, Mike Whalen sent a widely distributed campaign email message from info@mikewhalen.com in which he maintained "The campaign has checked with the FEC and it is in compliance with all federal rules."²⁰ Similarly, that same week he was quoted in news accounts as challenging Republican Primary opponent Bill Dix to file a complaint with the Federal Election Commission to determine whether the corporate funded TV ad constituted an illegal corporate campaign contribution. "They (Mr. Dix) should file a complaint with the FEC instead of calling you guys (the media).....I can't be more direct than that."²¹

Count I

Respondent Corporations and Corporate Agents Knowingly Conspired to Violate Federal Election Law by Making a Corporate Expenditure in Connection with a Federal Election.

For nearly 100 years, Congress has prohibited corporations from making contributions to candidates for federal office. The Tillman Act, passed in 1907, prohibited any corporation from making a "money contribution" in connection with federal elections. Act of Jan. 26, 1907 (Tillman Act), ch. 420, 34 Stat 864. Congress later extended the ban to encompass corporate donations of "anything of value." Federal Corrupt Practices Act of 1925, ch. 368, Tit. III, §§ 301, 313, 43 Stat. 1070, 1074.

The U.S. Code specifically prohibits corporate expenditures in connection with a federal election.

It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election

¹⁸ Darland and another individual residing at her home address are also donors to Whalen for Congress See Whalen for Congress April Quarterly report

¹⁹ Darland, a long-time local political activist, also plays a prominent role in the Whalen for Congress campaign as a fundraiser and prominent public supporter

²⁰ See attached Whalen campaign email dated November 23, 2005 included as Attachment H As of November 25, 2005, the Whalen campaign has not submitted an advisory opinion request to the Commission presenting all of the facts and circumstances Commission regulations provide that "[n]o opinion of an advisory nature may be issued by the Commission or any of its employees except in accordance with 11 CFR part 112," the procedures for a formal advisory opinion request. See 11 CFR 112 4(f); See also the conciliation agreement in MUR 3918, where the Commission unanimously concluded that advertisements for Joel Hyatt Legal Services were, in part, for the purpose of influencing Joe Hyatt's campaign for the United States Senate.

²¹ See Darla Wiese, "Commercial causing dispute between candidates", The Leader, November 25, 2005 Attachment I

to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices . . .”

2 U.S.C. § 441b(a); See also: 11 C.F.R. § 114.2.

In this instance, the Respondents conspired to utilize corporate funds and assets to produce and fund a television advertising campaign, and thereby expend corporate assets, in connection with the primary and general election campaign in Iowa’s First Congressional District.

It is undisputed that Carmen Darland, a corporate employee, wrote the script for the corporate funded TV ad, acting in her capacity as a corporate employee. Further it is undisputed that Whalen campaign consultants, Victory Enterprises, Inc. provided input into the content of the corporate funded TV ad and produced the commercial. Mike Whalen played a featured role in the corporate funded TV ad. He was clearly aware that his political consultants were filming the corporate funded TV ad, that he was restating language and themes utilized in the congressional campaign, and that the commercial would be paid for by the corporation and not the congressional campaign.²²

The undisputed facts evidence that Respondents made a prohibited corporate contribution of something of value to the Whalen for Congress campaign by sponsoring a corporate funded TV ad campaign that served to amplify the images, language, themes and messaging of Mike Whalen’s Congressional campaign.

Count II

Respondent Whalen for Congress and Mike Whalen Knowingly Conspired to Violate Federal Election Law by Accepting a Prohibited In-Kind Corporate Contribution

²² Although we are not yet within the time frame required for an electioneering communication, compare Mike Whalen’s conduct and involvement with this corporate funded TV ad with AO 2004-31 (where the Commission approved a corporate advertisement in a situation where the corporation shared the name of the candidate, the Commission approved this commercial primarily because the candidate was not involved in the creation or production of the commercial and the commercial did not refer to the candidate himself) and AO 2004-15 (where the Commission found that an advertisement for a documentary within 120 days of a primary or general election that mentioned a federal candidate could not be funded by a corporation because it constituted an electioneering communication)

The Federal Corrupt Practices Act also made it a crime for a candidate to accept corporate contributions. § 313, 43 Stat. 1074.1. Pursuant to 2 U.S.C. § 441b(a), federal political campaigns are prohibited from accepting contributions from corporations

In this instance, corporate spending for the production and placement of the corporate funded TV ad was known by both the campaign consultants and by the candidate Mike Whalen, all who were personally involved in producing the corporate funded TV ad. It is undisputed that Mike Whalen and Whalen for Congress knowingly accepted what, in this instance, constitutes an illegal, in-kind corporate contribution.

Count III

Respondent Corporations, Corporate Agents, Whalen for Congress, Mike Whalen and Whalen for Congress Consultants Knowingly Conspired to Make and Receive an Illegal In-Kind Corporate Contribution by Producing and Airing a Corporate Funded TV Ad that Constitute a Prohibited Coordinated Communication

The corporate funded TV ad is an improper coordinated communication made by a corporation to the benefit of a federal campaign. See 11 C.F.R. § 109.21. The recently enacted Bi-Partisan Campaign Finance Reform Act and its implementing regulations govern coordinated communications, providing a three-part test to determine whether a communication is “coordinated:”

- 1) Payment is made by a person other than the candidate’s campaign committee;
- 2) Content standards are satisfied; and
- 3) Conduct standards are satisfied.

11 C.F.R. § 109.21(a).

Payment: In this instance, it is undisputed that payment for the television advertisement was made by a corporate entity.

Content: 11 C.F.R. § 109.21(c)(2) provides, in part, that the content standard is satisfied by, “A public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate, the candidate’s authorized committee, or an agent of any of the foregoing. . .”

When analyzed in the context of the totality of the circumstances it is clear that the corporate funded TV ad constitutes in part “campaign material.” As detailed in the facts above: (a) the corporate funded TV ad utilizes images, language, themes and messaging substantially similar to those being utilized contemporaneously to promote Mike Whalen’s congressional campaign; (b) the ad was produced by the same media consultants directing Mike Whalen’s congressional campaign; (c) the ad featured Mike

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Whalen as spokesman, and (d) the ad utilized the political media consultant's employees and Whalen for Congress campaign volunteers to play the roles of restaurant diners.²³

It is undisputed that the corporate funded TV ad was "prepared" by Steve Grubbs and Victory Enterprises, both agents of Whalen for Congress.

Conduct: The conduct prong is satisfied as Steve Grubbs and Victory Enterprises, agents of Whalen for Congress, were materially involved in the production of the television advertisement,²⁴ engaged in substantial discussion about the advertisement,²⁵ and act as common vendors of both the corporate payee and the campaign committee.²⁶

As the elements of the three prong test of 11 C.F.R. § 109.21(a) are satisfied, the corporate funded TV ad clearly constitutes and improper coordinated communication.

Count IV

Whalen for Congress and Mike Whalen Knowingly Violated Federal Election Law by Failing to Disclose the Source of an In-Kind Corporate Donation

Whalen for Congress failed to report receipt of the in-kind contribution by these corporations for the costs of producing and airing the campaign commercial. See 11 C.F.R. part 104.

Count V

Whalen for Congress and Mike Whalen Violated the "Stand By Your Ad" Requirements of BCRA

The corporate funded TV ad does not include the disclaimers and "Stand-by-your-ad" requirements of the Federal Election Campaign Act. See 11 C.F.R. § 110.11.

²³ Compare Mike Whalen's conduct in this case with the conduct the Commission has previously approved See AO 2004-31 and AO 2004-15

²⁴ 11 C F R § 109.21(d)(2).

²⁵ 11 C F R § 109.21(d)(3)

²⁶ 11 C F R § 109 21(d)(4)

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Conclusion

Should the Commission find or have reason to believe that any of the respondents engaged in knowing and willful violations of the Act, this complaint and any evidence discovered by the Commission should be referred to the Attorney General for possible criminal prosecution, pursuant to 2 U.S.C. § 437g.

As a result of the above information, I request that the Federal Election Commission conduct an investigation into this matter, bring the individuals and organizations into compliance with the law and take appropriate action to remedy these violations.

Sincerely,

Carol Earnhardt

Carol Earnhardt
Manager, Brian Kennedy for Congress

Carol Earnhardt hereby verifies that the statements made in the above complaint are, upon information and belief, true.

Sworn to pursuant to 18 U.S.C. § 1001.

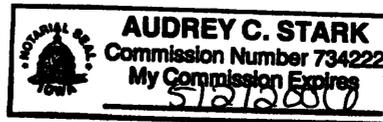
Carol Earnhardt

County of Scott

State of Iowa

The foregoing instrument was subscribed and sworn before me this 30th day of November, 2005 by

Audrey C Stark
Notary Public



My commission expires 5/2/2006

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OFFICE OF GENERAL
COUNSEL
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Attachment A

Attachment A – Respondents

Whalen for Congress
c/o Kirk Evan Whalen, Treasurer
P. O. Box 750
Bettendorf, IA 52722

Victory Enterprises, Inc.
5200 30th St SW # 7
Davenport, IA 52802

Steve Grubbs
5200 30th St SW # 7
Davenport, IA 52802

Brian Dumas
5200 30th St SW # 7
Davenport, IA 52802

Heart of America Restaurants & Inns, Inc.
1501 River Dr
Moline, IL 61265

Machine Shed Restaurants, Inc.
1501 River Dr
Moline, IL 61265

Carmen Darland
Vice President for Marketing
Heart Of America Restaurants & Inns, Inc.
1501 River Dr
Moline, IL 61265

Mike Whalen
CEO
Heart Of America Restaurants
1501 River Dr
Moline, IL 61265

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Attachment B

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Home

About Mike

Issues

News

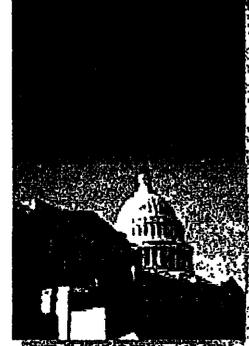
Volunteer

Donate

District

Contact

Events



BETTENDORF - For the past 27 years, Mike Whalen has been serving up tasty dishes for customers at his restaurants.

North Scott Press

Now, the Bettendorf businessman hopes to serve up a heaping helping of representation in Washington, as he seeks a seat in the U.S. House of Representatives.

Whalen - the owner of Heart of America Restaurants and Inns, with restaurants and hotels in six states - announced his bid for Iowa's First Congressional District seat Monday. The seat is being vacated by Rep. Jim Nussle (R-Iowa), who announced his plans to seek the Iowa governorship last week.

In a statement, Whalen said that, if elected, he plans to put lessons he learned as a successful restaurateur to use in Washington.

"Pork should be served on a plate, not in legislation," Whalen said. "We've been eating the food the federal government has been serving for too long and it's time to send a voice to Washington who is more concerned about the next generation than the next election."

A graduate of Harvard Law School, Whalen opened the Iowa Machine Shed in 1978. He dedicated the restaurant to the Iowa farmer.

"America owes a lot to rural Iowa," he said, "and I want to be an advocate for Iowa's farms and small towns like our restaurant has tried to be for 27 years."

Whalen also served with former Delaware Governor Pete du Pont as policy chairman for the National Center for Policy Analysis which promotes free market solutions to public policy issues.

Some of his biggest issues include the protection and preservation of Social Security, and the availability of health care through Health Savings Accounts.

Whalen is the co-founder of Wildwood Hills, a summer camp for disadvantaged youth, and a Christian radio station targeted to young people. He has been named one of Inc. magazine's "Entrepreneurs of the Year."

He and his wife, Kim, have two children, Christopher and Katie.

Those interested in learning more about Whalen's campaign may go to the Web site <http://www.MikeWhalen.com>.

Paid for by Whalen for Congress

© 2005

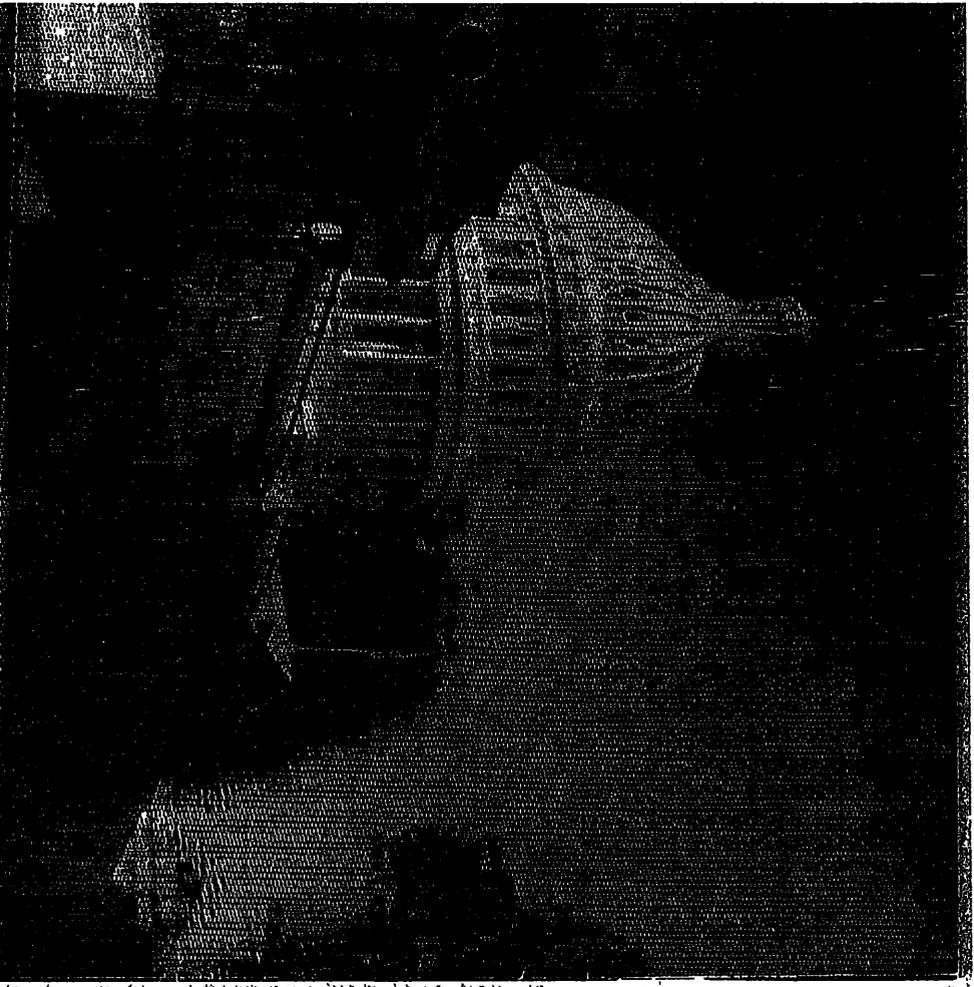
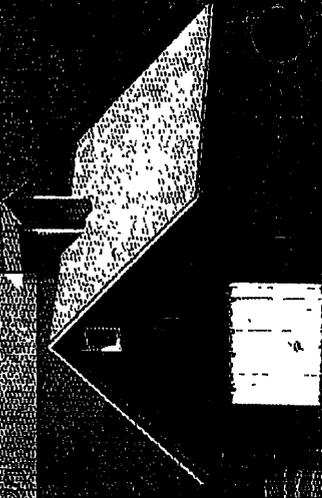
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Attachment C

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Yes to Pork Chops,
No to Pork Barrel



It was the blizzard of 1979 and any Iowan who lived through the deluge of snow won't forget the piles of towering drifts and freezing temperatures. For Mike Whalen, it meant more than a day off. For him it meant the first time he might not be able to make the payroll of his fledgling restaurant. As he watched the snow begin to fall - then pileup in record amounts - he knew he was in for a tough few days. But when the Department of Transportation closed down Interstate 80, he felt he might just be living through a disaster. He didn't live very far from his restaurant but driving was out of the question. Actually, Mike couldn't even find the road when he donned his snow boots and headed out, but he did the best he could and went to work.

A year earlier, most people would have been surprised to find him standing in snow as high as his head. He had just graduated from Harvard Law School and his classmates were headed to high rise jobs in New York and to K Street firms in Washington D.C., but Mike Whalen had other plans.

It was June of 1978 and Mike was taking the exam to get his law license and attempting to open the Iowa Machine Shed Restaurant all in the same week. Some people thought he was crazy, but he had an itch that no amount of scratching could satisfy, with the help of his father and a local partner he opened a restaurant dedicated to the Iowa farmer, one that would sell real Iowa products.

in his home state

Today, Mike Whalen is running for Congress in Iowa's First Congressional District where he is generally known as a restaurateur. But most people don't know the other Mike Whalen, the one who has been active working with our nation's leaders formulating solutions to real world problems

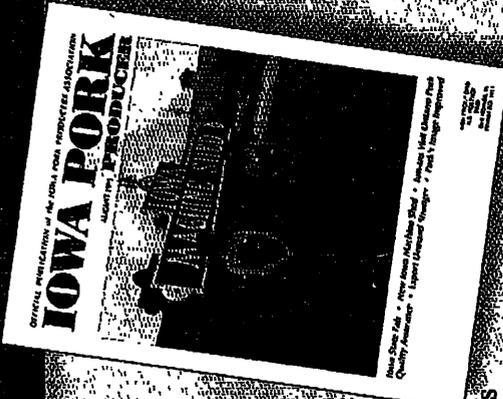
using free market approaches, or the Mike Whalen who co-founded a ranch for disadvantaged youth in St. Charles, Iowa, and co-launched a Christian radio station in Des Moines. The Mike Whalen Story is about an Iowan who is committed to creating jobs and helping people, and if you're a voter in Eastern Iowa, it's worth reading.

Mike successfully passed the exam to become a lawyer and launched his restaurant just off Interstate 80 in Davenport during that one week in 1978.

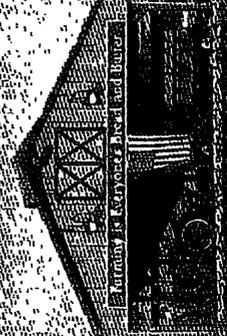
It was a tough first year. Sixteen hour days and seven day work weeks were common place. Somehow, all the books Mike had read about entrepreneurs working hard and living their dream seemed a lot more inspirational in the press of problems that Whalen was actually creating that



Golden Butter Kniffe. Mike Whalen, Mike Whalen's brother, Frank Corbett, president of the Golden Butter Kniffe, and Mike Whalen, president of the Golden Butter Kniffe, are pictured with the award. The award was presented at Dairy America's National Dairy Show in Des Moines, Iowa.



Fortunately, his dad had been recommended to help take the load off. Her name was Kim Cox. She was born in Dubuque, and she wanted out to be in Iowa. Mike needed to help him through the maze of paperwork and long hours at the restaurant. Kim was dedicated to the success of the business just like Mike and he quickly found a partner and friend. They bonded together for years before the opportunity arose for Mike to ask her out and they immediately began a chemistry outside of work. After eight years of working together, Mike and Kim married and started a family. Today - 27 years later - they still run the company together.



still closed and some travelers were literally freezing to death as they tried to find their way out of the blizzard. Mike headed out of the restaurant to see what the skies looked like and saw signs he had never seen before and has never seen since. Guests of the hotel next door were jumping off the roof into the snow drifts that reached nine feet in places. Mike saw snowmobilers racing up the middle of the street and an idea grabbed him. Mike hailed a snowmobiler and hired them to fetch his cooks and bring them to the restaurant. At the same time, he headed out to find more food supplies to replenish the dwindling shelves.

In the end, the Machine Shed survived the blizzard of '79. Mike was able to make payroll, feed a lot of stranded travelers, and he learned again how important it is to persevere in the world of small business - even in the face of nine foot snow drifts.

It's that entrepreneurial spirit that still drives Mike Whalen 27 years later. The challenges that faced Mike and Kim didn't end with the blizzard.

Michael Whalen: Serving Up Traditional Farm Fare

Real, unadorned potatoes and homemade pies have won accolades for the restaurant's lawyer who returned for the blizzard.



**I Survived
Blizzard
of '79**

By the third day, supplies and staff were both wearing thin. The Interstate was

In fact, some of the toughest challenges would come from regulators, tax collectors and bureaucrats. In the end, it's the same story for small businesses all over Iowa that work every day to make a payroll and provide a good product.

From one small restaurant in Davenport, Iowa, Heart of America Restaurants & Inns now has 19 restaurants and 9 hotels in six states. But, through it all, the company is still an Iowa company that employs roughly 600 Iowans and pays its corporate taxes in Iowa.

Family, faith and commitment to community sometimes sound like clichés in the midst of a campaign, but they're values that have marked Mike Whalen's life. Mike and Kim have two children, Christopher and Katie, and live in Bettendorf, Iowa. As proud parents, much of their free time is consumed the same way it is in most households in Iowa — spending time at their children's activities. For example, Katie once unexpectedly brought home a dog and announced that she and her friends had picked their names and she was new.

The proud owner of one-third of a formerly unwanted puppy. Animals in the Whalen family are commonplace, but as Mike let's it be known there was a fractional ownership program for pets. Nevertheless, they had

one-third of a puppy. Shortly thereafter, the new dog was stepped on by a horse and had its front leg broken. Suddenly fractional ownership meant spitting veterinary bills.

The bottom line for Mike Whalen is simple: family is important and it's one of the main reasons Mike is so interested in what happens with our government.

Working to improve Iowa communities is a priority for Mike as well. Fourteen years ago, he saw an opportunity to make a difference when he and some partners launched a Christian radio station, KZZQ 99.5 FM in Des Moines. Having an outlet for young people to hear music with a positive message is an important part of helping our youth.

But his commitment to Iowa youth doesn't stop there. The "Machine Shed" scholarship fund for students who choose to study an agriculture-related program in college has awarded almost \$250,000 in scholarships to date.

Four years ago, Mike co-founded Wildwood Hills Ranch in St. Charles, Iowa. The facility previously was an expensive horse camp for privileged children that had been closed. A small handful of Iowans understood the importance of offering a program for disadvantaged youth and rounded up enough money to reopen it in 2002. Today, the Ranch serves hundreds of children from disadvantaged homes across Iowa.



Mike Whalen is now looking at another passion of his - making a difference to our state and nation.

When you've spent much of your life serving pork chops in a restaurant, you get a good feel for the pulse of the people. That's critical for anyone who wants to serve us in government. A small business also gives you a feel for the burden of government regulation, the weight of frivolous lawsuits, the challenge of affordable health insurance and the importance of creating jobs.

It's from this background that Mike Whalen has launched his campaign for the Congressional seat held by Jim Nussle.

Most people remember George McGovern as a liberal U.S. Senator from South Dakota, but not many people remember George McGovern as an entrepreneur. After he left public office, he opened a little bed and breakfast, his first foray into the world of business (which he had been taxing and regulating for many years in the U.S. Senate). Interviewed about this venture after its launch, he commented that he never knew there were so many regulations, small businesses had to survive.

Mike Whalen likes to say "the country would have been a lot better off had George McGovern opened his business before he was elected rather than after." And

that's the point about our elected officials - we expect them to represent us and make laws that we will live under. In essence, we as citizens have to "eat the cooking" that Washington is serving. So we'd better send someone to Congress who knows how to cook.



A Shrine to Everything Pork

THE HONOR MACHINE MEN

Mike Whalen has the real world experience in life and business we need.

Not too long ago, Mike was speaking to a group of disadvantaged youth. What he told them was important for every young person to hear. "Don't be discouraged because you get rejected or turned down. Don't assume it's necessarily because you're Hispanic or black or poor. I've been turned down more times than I can count. The important lesson to learn early in life is to never give up your dream. Preparation and perseverance is an unbeatable combination in America."

When Mike Whalen talks about rejection, it's a subject he knows well. When Mike and Kim decided to open their first large restaurant, River City Café, they had to find a way to finance the project. It was envisioned to be a 220 seat restaurant, more than twice the size of their first restaurant. The plan made bankers nervous and because of that, he was turned down by bank after bank. He got one from his

homestead, decided to take a risk on him. Before agreeing to make the loan, the banker dropped into Mike's office (which at that time was in his basement). He had heard that Mike was a real, an old-fashioned, honest Iowa farmer. When he saw Mike's legs, when he saw Mike's face, when he heard Mike's heart, he realized that he was dealing with someone who was a real Iowa farmer. Mike's second money, however, came from a source he never expected. It was a million-dollar loan to a man who wore a ten-dollar watch, but there's a first time for everything.

Today, Mike is traveling Eastern Iowa asking for votes. Instead of serving up pork chops, he's serving Iowa commonsense; and he's leading on the issues that others have been afraid to touch. Mike was one of the early leaders in the effort to save Social Security from its impending financial crisis. He served as Policy Chair for the National Center for Policy Analysis, a national think tank dedicated to educating Americans on free market solutions to government problems. In this position, he worked closely with former Delaware Governor Peircé du Pont to advance commonsense solutions to real American problems.

In addition to personal retirement accounts to ease the Social Security financial crunch, Mike is also urging commonsense solutions for



problems with government health care delivery, tax code reform and an end to lawsuit abuse.

Mike Whalen isn't running for Congress for the title, he's running for Congress because he has a burning desire to make a difference for our families. Mike opened a restaurant dedicated to the Iowa farmer just shortly before the collapse of the Iowa farm economy. In his own way, he was able to make a small difference for Iowa agriculture. Twenty-seven years and more than a million pork chops later, Mike Whalen is still looking to make a positive difference for our state.

He believes that one person can change things for the better in America, but he also knows he can't do it alone.

Today his challenge is to survive the blitz and of '06. It's another election to issue surviving the blitz and of '06. Mike Whalen invites you to join him in this effort and help win the election the same way he built his restaurants - one person at a time.



Thanks for taking the time to read this story. If you would like to help Mike Whalen's campaign, please take a minute to fill out the volunteer card and return it. You can also visit the web site at www.MikeWhalen.com to learn more or sign up to help. Again, thank you for your time.

PAID FOR BY MIKE WHALEN FOR CONGRESS

27044161008



Contact the Campaign:

P.O. Box 750

Bettendorf, Iowa 52722

1-866-648-MIKE

Fax: (563) 383-0606

www.MikeWhalen.com

**W^{Mike}
WHALEN**
CONGRESS

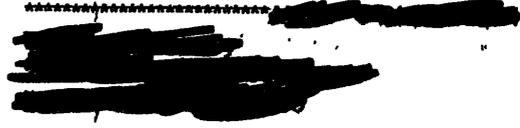
Republican for Congress

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Bettendorf, Iowa 52722

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Attachment D

TV ads become issue in campaign

By Ed Tibbetts

Television advertisements for the Iowa Machine Shed restaurant have become an issue in Iowa's 1st District congressional campaign.

Two Republicans running for the party's nomination have raised questions about the ads, noting the third GOP candidate in the race, Mike Whalen of Bettendorf, is featured prominently in them. Whalen is chief executive of Heart of America Restaurants Inc., which owns the Machine Shed restaurants.

Brian Kennedy, a Bettendorf lawyer and former chairman of the Republican Party of Iowa, says the advertisements raise questions about whether corporate assets are being used to further Whalen's congressional campaign.

Kennedy said he's seen the ads in the Quad-Cities but also has been told ads have run in Dubuque and Waterloo, where there are no Machine Shed restaurants. The 1st congressional district includes those cities.

Charles Burkart, a Dubuque man who supports Kennedy, said Friday he saw an ad there within the past week.

Kennedy, Whalen and Iowa Rep. Bill Dix, R-Shell Rock, are all vying for the 1st District nomination to replace U.S. Rep. Jim Nussle, R-Iowa. Dix said he hasn't seen the ads but he's heard about them.

"They strike me as a bit curious," Dix said.

Whalen's founding of the Machine Shed and its growth into a hospitality firm spanning several states is a central part of his personal history and has been integrated into his congressional campaign.

His congressional Web site features the restaurant and a glossy brochure is titled, "Yes to Pork Chops, No to Pork Barrel." But Whalen said Friday there has been no coordination between his company and his campaign, and he rejected any accusations of impropriety.

"We have a pretty large company and I don't micromanage the marketing," he said, adding that, if anything, advertising spending is at lower levels than it's been historically. The most recent ad that's run in which he was featured was produced in 2002, he said.

Whalen, who for years has been the principal pitchman for the company, said he didn't know whether ads had run in Waterloo or Dubuque but added it wasn't inconceivable because the company advertises regionally on occasion.

He attributed the flap to Kennedy trying to gain traction in the race. Kennedy is trailing Whalen and Dix in fundraising. He added he doesn't plan to ask the company to change its advertising strategy.

"I don't micromanage now and I won't in the future," Whalen said.

Dix and Kennedy said they have not filed a complaint with the Federal Election Commission, and Kennedy said he has no intention to do so.

However, a legal opinion from a Virginia law firm, provided via Kennedy's campaign, stated the advertisements constitute an impermissible corporate contribution. It noted the ads are being paid for and designed by the candidate's own company. Kennedy said his campaign did not request the opinion but a friend did.

Ed Tibbetts can be contacted at

(563) 383-2327 or etibbetts@qctimes.com.

27044161011

27044161012

Attachment E


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Whalen campaign kick off with time to spare

By *CYRUS MOUSSAVI, Courier Staff Writer*

WATERLOO — When Jim Nussle announced he would leave his position as an Iowa congressman to run for governor, he inadvertently unleashed what Mike Whalen called "a perfect political storm."

Whalen, 50, a Bettendorf businessman, joined seven other potential candidates in the middle of the storm when he visited Waterloo Tuesday to officially announce his campaign for Nussle's 1st District Congressional seat.

All of the candidates are beginning their campaigns early this year. "There are not many races up for grabs, there's an empty seat and the elections are right before a caucus," Whalen explained. These ingredients mean a fierce fight in the state and national party involvement. "This is going to be a real challenge," the Republican candidate told the small gathering at Lockard Development.

But Whalen, a graduate of Harvard law school who owns the Iowa Machine Shed restaurant in Davenport along with 25 other hotels and restaurants in six states, believes his success in the private sector will give him an advantage over his competitors. He emphasized he isn't a professional politician and that he understands what it means to build a small business from the ground up.

"I'm going to go out to Washington as a citizen legislator," Whalen said.

Whalen focused his speech on the development of business in Iowa, but also said he plans on "conserving our traditional conservative values."

"I was given such a head start in life because I was born in Iowa," Whalen said. "We need folks who'll go to Washington and say 'look, we need to fix Social Security, we need to do something about Medicaid and Medicare.'"

Whalen said he will keep in mind issues of more immediate concern to his constituents back home as well. "Are we still going to be making little green tractors in Eastern Iowa in 20 years?" Whalen asked, "That's an important question."

Kenneth Lockard, president of Lockard Development and the host of the gathering, believes that with Whalen in office, Iowa will have a secure future.

"I've known Mike for a long time. Everything in Mike's career, he's

absolutely risen to the very top, from school to his business to how he's given back to the community," Lockard said. "His level of intellectual ability on Capitol Hill will serve us very, very well."

With more than a year to go before the elections, Whalen isn't looking that far ahead. "I have to treat this campaign like a marathon," Whalen said, "it's not a sprint."

In addition to his business success, Whalen co-founded Wildwood Hills Ranch, a 400-acre camp for disadvantaged children, among other civic activities and has served on the National Center for Policy Analysis as a board member and chairman.

Paid for by Whalen for Congress

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Attachment F



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November 11, 2005 8:53 AM

Rivals complain about Whalen television spot

DES MOINES, Iowa (AP) -- Republican candidates in eastern Iowa's 1st Congressional District are complaining that television spots being aired to promote the business of a rival for their party's nomination are a thinly veiled campaign spot financed by the business.

"I think there's good reason for people to take a good look at how appropriate that is," said Rep. Bill Dix, R-Shell Rock, one of the candidates seeking the GOP nomination in the district.

"This nomination has to be won and not sold to the candidate with the biggest fortune," said Brian Kennedy, a Bettendorf lawyer also seeking the nomination.

Davenport businessman Mike Whalen rejected the charges, saying he's merely running a business.

At issue is a television commercial which has aired in eastern Iowa for the Machine Shed Restaurant, one of the businesses Whalen owns. The ad features Whalen sitting at a table talking about his philosophy for running his business and how it's linked to Iowa.

Critics say the spot is little more than a campaign commercial that's being paid for by Whalen's business. They say the ad has even aired in areas where Whalen doesn't have a business.

"I'm aware that there is an issue of whether or not that constitutes electioneering and whether it's appropriate for a corporation to pay for them," Kennedy said.

Whalen spokesman Brian Dumas said the commercial was filmed long ago and is airing again for business reasons.

Burns Tree Farm
 \$20 Christmas trees

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THE SE WAY CO TU CO ILL IN 4470

27044161016

"It was shot well before he was ever considered a candidate or had thought about running," Dumas said.

[Ads by t](#)

Dumas said the commercial wasn't produced by the media advisers used by the campaign, but by a media firm Whalen uses for all of his businesses.

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"Mike has been doing his own advertising for the last 10 to 15 years," Dumas said. "He's got a business to run and he's got to promote the Machine Shed."

Jill Holtzman Vogel, a Washington lawyer and former counsel to the Republican National Committee on campaign finance areas, said there are clear restrictions on candidates using commercial advertising that could benefit their campaign.

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"In the analysis above, it is clear that a federal candidate's appearance in commercial advertising, broadcast in the candidate's district, would likely be found to be an impermissible corporate contribution," she wrote in a legal opinion provided to reporters by the Kennedy campaign.

"Commercial advertising that contains themes similar to those used in the campaign of the candidate would invite immediate scrutiny and imply unlawful coordination," she wrote.

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No complaints have been filed with the Federal Election Commission over the issue.

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27044161018

Attachment G

TV ad prompts more concern

By Ed Tibbetts

The campaign consultant for Republican congressional candidate Mike Whalen produced a television advertisement for the Iowa Machine Shed earlier this year that featured Whalen, prompting one of his opponents to question again whether the Quad-City entrepreneur is using corporate funds to advance his political effort.

The ad, which was produced in March by Victory Enterprises Inc. of Davenport, began running the first week of April and continued to be broadcast through Aug. 11.

Steve Grubbs, president of Davenport-based Victory Enterprises, acknowledged Thursday that his company produced the ad, but he and Whalen both said the spot was done for the Machine Shed, not the political campaign. Whalen, who is making his first bid for Congress, is the chief executive of Heart of America Restaurants & Inns, the parent company of the Machine Shed restaurants.

"The ad promotes the Machine Shed and it's the same thing Mike has been doing for 20 years," Grubbs said. He added that Victory Enterprises produces ads for other corporate clients, too.

Last week, Brian Kennedy, the former chairman of the Republican Party of Iowa, and Iowa Rep. Bill Dix, R-Shell Rock, Whalen's two rivals for GOP nomination in Iowa's 1st District, questioned the Machine Shed advertising.

Kennedy, of Bettendorf, said federal campaign finance laws may have been broken and that a Virginia law firm's legal opinion provided through his campaign stated it likely would be a violation. "At any time, it's prohibited to use corporate assets to advance a campaign," he said Thursday. Kennedy added that his campaign probably will review the matter and decide whether to file a complaint with the Federal Election Commission.

Grubbs said the campaign has checked with the commission and been told the ad passes muster as long as it does not communicate a "campaign message." He referred a reporter to two advisory opinions that he said bolster his belief the ads are legal.

The FEC could not immediately clarify the issue Thursday when contacted by the Quad-City Times.

The ad opens with a scene of an Iowa farm field and two men tossing a bale of hay, then cuts to the Machine Shed restaurant with Whalen on screen praising the food and its 27-year connection to the state's farmers. "We'll look forward to sharing the best that Iowa agriculture has to offer," he says as the ad closes.

Whalen said the spot conveys the same theme Machine Shed ads always have. "It's been a pretty consistent message for 27 years," he said. "To insinuate I'm doing something nefarious is ridiculous."

Carmen Darland, vice

president for marketing at Quad-City-based Heart of America, said she wrote the script for the ad but Victory did contribute ideas. She said there was no discussion of Whalen's congressional campaign.

The ad was shot in March, two months after Grubbs said he began working for the Whalen campaign.

Darland said she and Grubbs first discussed the ad in November 2004, though.

Dix, who has not seen the ad, reiterated Thursday what he said last week, that it is "curious and strange." However, he said no determination has been made on whether to file a complaint.

A separate ad, which is running now in the Quad-Cities, also features Whalen, but it was produced by another company in 2002.

Ed Tibbetts can be contacted at (563) 383-2327 or etibbetts@qctimes.com.

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27044161821

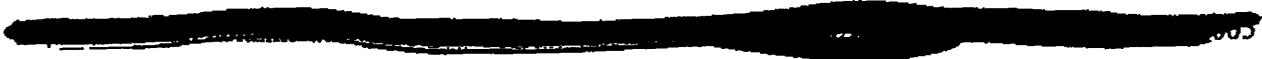
Attachment H

From: MikeWhalen.com [mailto:info@mikewhalen.com]
Sent: Wednesday, November 23, 2005 1:30 PM
Subject: When candidates attack...



The mud slinging has started already and it's more than six months before the primary. Both of Mike's Republican primary opponents are attacking him, not

27044161022



about issues, or what's important to you or for the First District, but with baseless personal attacks. If you follow politics, you know candidates go on the attack when they're behind and feel their campaigns slipping away - especially six months out from the election. Mike's opponents, Bill Dix and Brian Kennedy, are practicing "gotcha-politics," trying to artificially generate issues to attack Mike's credibility.

As you know, Mike started the Iowa Machine Shed Restaurant in 1978. For over twenty years, Mike has been appearing in his own ads marketing his restaurants. Now his opponents want him to stop that. It's not always easy for a businessman to run for office because of issues like this, but Mike plans to continue marketing his company while also running a campaign. Mike has a responsibility to his 600 plus Iowa employees to continue marketing his company. The campaign has checked with the FEC and it is in compliance with all federal rules.

Over the last few months, Mike has focused on introducing himself to voters and talking about issues like immigration reform, property rights and job creation - not engaging in attack style politics.

Unfortunately, this is only the beginning. As you can clearly see from the rest of this email, Mike is leading in the race, and as long as this continues, the political reality is that the attacks will continue. Mike is ready for the challenge, because he knows the future of the First District is at stake.

We want you to know, if you ever hear something that doesn't sound quite right or have a question about the campaign, please feel free to call the campaign at (866) 648-MIKE or email Marti Meersman at marti@mikewhalen.com.

Mike has the "Momentum" According to the Poll Numbers:

Recent polling conducted by the campaign shows Mike in a strong position as the clear front runner. Among likely Republican primary voters Mike garnered **31% of the vote**, **Bill Dix was second at 12%** and **Brian Kennedy trailed with 6% of the vote**. While we are six months from the primary election, and the only poll that counts is the one taken on Election Day, the research shows that people who have had the opportunity to meet all three candidates are choosing Mike as the candidate best prepared to take on the Democrat nominee in the general election.

The poll was conducted by McLaughlin and Associates of New York. McLaughlin is a nationally recognized Republican polling firm that is known for integrity and accuracy. Their client list includes Governor Arnold Schwarzenegger and U.S.

27044161023

Senator George Allen

Mike has the "Momentum" According to Recent Fundraising Numbers:

During the last quarter Mike showed a substantial lead in fundraising. But a closer look at the numbers shows an even greater disparity between the candidates.

Here are the results of itemized contributions from people living in the 1st District, not including contributions from the candidate.

Mike Whalen: \$44,750.00

Bill Dix: \$23,450.00

Brian Kennedy: \$2,860.64

If you are able to help Mike with a contribution, [click here](#) and donate on-line

Mike has the "Momentum" in Grassroots Organization:

As of time of this email, 1,523 1st District Republicans have signed up to vote for Mike. Hundreds of these Republicans have indicated their eagerness to volunteer, take a yard sign or host an event in their home for Mike. In fact, if you've recently traveled Black Hawk County or across Hwy 20 from Waterloo to Dubuque you've likely seen a "Mike! Mike! Mike!" Barn sign.



27044151024



WE NEED MORE LARGE SIGN LOCATIONS! If you have a location for a "Mike! Mike! Mike!" Barn sign please email Marti at marti@mikewhalen.com

To get involved in Mike's campaign, [click here.](#)

To donate to Mike's campaign, [click here.](#)

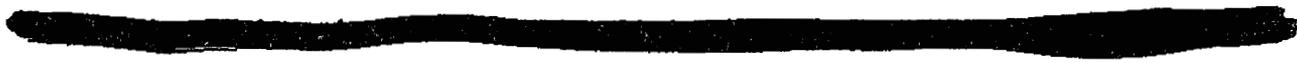
To visit Mike's website and read more about him, [click here.](#)

If you're interested in hosting a Fundraising House Party in your community, please contact Andrea at 563-343-6252 or email her at andrea@MikeWhalen.com.

Learn more about Mike at www.MikeWhalen.com or to volunteer today, [click here.](#)



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27044161025

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Mike Whalen for Congress | P.O. Box 750 | Bettendorf | IA | 52722

27044161026



27044161027

Attachment I

Commercial causing dispute between candidates

By Peter M. Weiss

Commercial Editor

Rep. Bill Dix, R-Slack Road, has called on Mike Whalen, his primary opponent, to self-financing his campaign for state representative. Dix says his opponent's campaign is a "silly effort to hijack the political campaign." People who have bought this corporate advertisement to my attention have indicated they don't

determine if Mike is trying to sell pork chops or self himself. Mr. Dix said in a telephone interview.

The commercial in question features Mr. Whalen sitting in his Iowa Machine Shed restaurant, explaining the values he wants to run his business and how that relates to how he runs his restaurant. Mr. Whalen, Bettendorf, is a GOP hopeful for incumbent Jim

Nussle's seat and said he's more than a little tired of defending his commercial.

"How many days in a row can this be a story?" he asked. "I think the average public understands that when I ask them to come to for a pork chop I'm not asking for them to vote for me." Mr. Dix has argued that it's just a matter of time before Democrats seize on these discrepancies and

file a complaint with the Federal Election Commission.

Mr. Whalen, however, challenges Dix's to file his own complaint if he has a problem with the commercial.

"The fact that Dix should file a complaint with the FEC instead of asking you guys (the media) to file a complaint is more than that."